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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,907	08/24/2001	Brad Davis	UTL 00011	3331
32968	7590	07/14/2005	EXAMINER	
KYOCERA WIRELESS CORP. P.O. BOX 928289 SAN DIEGO, CA 92192-8289			SING, SIMON P	
			ART UNIT	PAPER NUMBER
			2645	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/938,907	DAVIS, BRAD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Simon Sing	2645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 April 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2,4-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2,4-16 and 18-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Allowable Subject Matter***

1. The indicated allowability of claim 3 is withdrawn in view of the newly discovered reference to Kumar et al. US 6,212,399, and a further review of the claims. Rejections based on the newly cited reference and reasons for rejection are stated below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 4, 5, 8-16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rong et al. US 6,775,548 in view of Kumar et al. US 6,212,399 and further in view of Ozluturk et al. US 6,434,135.

2.1 Regarding claims 2 and 16, Rong discloses a method and system for accessing a telecommunications system by a mobile station 114 with a transmitter 204 and a receiver 206 shown in figure 1. Rong teaches:

determining a relative transmitter output power required for transmission over an access channel based upon a first data transmission rate for the access channel (column 6, lines 53-63; column 7, lines 37-47);

determining a projected output power required for transmission over all channels (pilot channel and access channel) to be transmitted based upon the relative transmitter output power required for transmission over the access channel at the first data rate (column 8, lines 51-56);

comparing the projected power to a maximum transmitter output power (column 8, lines 51-56); and

selecting a second data transmission rate for the access channel if the projected power exceed the maximum transmitter output power (column 8, lines 56-67; column 9, lines 1-3).

Rong fails to teach measuring transmitter's output power due to transmission by estimating current transmitter out power by averaging output power over a stated time periods.

However, the measuring step is not tied to the rest of the steps in the claim, and determination of patentability cannot depend on this stand-alone single step, therefore, with the newly discovered prior art, the indication of allowability stated in the previous office action is withdrawn.

Kumar teaches measuring transmitting power by absolute power or average power (column 2, lines 14-18), and Ozluturk teaches measuring an average RF power over a selected period of time (column 5, claim 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rong's reference with teachings of Kumar and Ozlukturk, so that mobile station 114 would have included a measuring means for measuring the transmitter's average output power over a predetermined time period, because such modification would have provided feedback information to the transmit power control module 208 (figure 2).

2.2 Regarding claims 4 and 5, the modified Rong's reference, teaches measuring transmitter out power, and since the measuring means measures the output power of a RF power amplifier (see figure 5 of Ozlukert), the transmission power of a single channel, or a combination of channels is measured.

2.3 Regarding claims 8 and 9, Rong teaches determining the power headroom for transmitting a predetermined data rate (column 8, lines 51-60), which inherently including transmission power of all channels.

2.4 Regarding claim 10, Rong teaches determining whether transmitting a predetermined data rate is within the maximum transmission output power (column 8, lines 51-60).

2.5 Regarding claim 11, it is inherent that a user may use mobile station 114 for data transmission at least once per month, therefore, the measuring, determining and comparing steps are repeated monthly.

2.6 Regarding claim 12, Rong teaches selecting a lower data rate or a higher data rate based on the power headroom (column 8, lines 56-63; column 9, lines 4-16).

2.7 Regarding claims 13 and 19, Rong teaches selecting a lower data rate for the receiver of a base station (column 8, line 64 to column 9, line 3).

2.8 Regarding claim 14, it is inherent that the data rate is proposed to the receiver of the base station only once during a setup period.

2.9 Regarding claims 15 and 20, Rong teaches using 19.2 kbps as a default rate (column 8, lines 49-56).

3. Claims 6, 7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rong et al. US 6,775,548 in view of Kumar et al. US 6,2212,399 and further in view of Ozlukturk et al. US 6,434,135 and further in view of Applicant's disclosure (Background art).

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3.1 Regarding claims 6 and 18, the modified Rong's reference, teaches transmitting data at variable data rate based on the available transmission power. Rong further teaches storing relative transmission power at particular data rates for an access channel (column 7, lines 37-47), selecting a data rate for the access channel, and converting the relative transmission power to an absolute transmission power (column 8, lines 51-63).

Rong fails to teach storing relative transmission power for each channel at particular data rates.

However, the Applicant discloses table 1 in the background art, which teaches an IS-98D standard for storing relative transmission power for a plurality of channels at particular data rate (Specification, page 9).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rong's reference, which was modified by Kumar and Ozluturk, with the background art, so that relative transmission power for a plurality of channels would have been stored in a memory, because such modification would have complied with IS-98D standard.

3.2 Regarding claim 7, the modified Rong's reference, teaches storing transmission power in absolute value, but fails to teach storing the transmission poser is relative value with respect to one channel.

However, Rong teaches a transmission power level in terms of relative decibel (such as 3 dB or 6 dB) to another transmission power (column 7, lines 37-47).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rong's reference, so that relative transmission power would have been stored as a relative decibel to one channel, because storing a transmission power as an absolute value or as a relative value would have been a design choice.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Simon Sing whose telephone number is 571-272-7545. The examiner can normally be reached on Monday - Friday from 8:30 AM to 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang, can be reached at 571-272-7547. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 (571-273-8300 after 7/15/2005). Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.



S. Sing

0/07/2005



FAN TSANG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600